* **HIGH COURT OF DELHI : NEW DELHI**

Date of reserve : September 27, 2007
Date of judgment : October 22, 2007

\+ **W.P. (C) No. 1618/2007**

% Bhageloo ...Petitioner
Through: Mr. M.K. Bhardwaj, Advocate

versus

Union of India & Others ...Respondent
Through: Mr. T. Mahipal, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J.

1. The Petitioner joined as Khalasi with the Respondent in 1978 and was promoted to the post of S.S. Fitter w.e.f. 15.12.1980. He was further promoted to the post of Fitter w.e.f. 15.1.1983 in the pay scale of Rs.950-1500. After rendering 7 years of service he became eligible for promotion to the next higher grade of Rs.1200-1800. It appears that the juniors of the

Petitioner were promoted to the next higher grade of Rs.1200-1800 while he was left out. He represented against his being denied promotion but to no avail. In the meantime, his juniors were further promoted as Fitter Grade I in the pay scale of Rs.1320-2040 in the year 1993. He further represented on 24.9.1999 for promotion and for his being placed at par with his juniors. Eventually, he filed O.A. No. 1540/002, which was disposed of on 6.6.2002 by the Tribunal directing the Respondents to dispose of the Petitioner's representation. The Petitioner filed CCP No.491/2002 complaining that the orders were not complied with. Finally the grievance of the Petitioner was redressed and he was promoted to the post of Fitter Grade I in the pay scale of Rs.4500-7000 with effect from 1.6.2003. Not satisfied, the Petitioner once again approached the Tribunal by filing O.A. No. 502/2004 seeking promotion from 1991 when his juniors were promoted.

2. The Respondents contested the application. It was pointed out that the Juniors of the Petitioner, who were granted promotion prior to him, fell in reserved category. The applicant, though falling in the reserved category had never disclosed about the same ever since he joined the Respondent department. In pursuance of the order of Tribunal dated 6.6.2002, the Petitioner

was granted proforma promotion on the post of Fitter Grade II in the pay scale of Rs.400-6000 with effect from May 1991 and on the post of Fitter Grade I in the pay scale of Rs.4500-7000 with effect from 1.3.1993 at par with his juniors vide letter dated 19.5.2003. Actual payment in the higher grade had been given to the Petitioner with effect from 1.6.2003. In terms of Railway Board instructions vide letter No. E(NG)I-2002/PMI/16 dated 2.7.2003, no arrears were payable to the Petitioner on proforma promotion. The Respondent relied on decision of the Supreme Court wherein it has been held that the employees were not entitled to higher salary during the period of proforma promotion on the basis of the principle 'no work no pay', since they had not worked on the higher posts. The Tribunal by relying on paragraph 228 of the Indian Railway Employees Manual (IREM) and the aforesaid letter of the Railway Board dated 2.7.2003 dismissed the aforesaid OA. The Tribunal has also relied on various decisions of the Hon'ble Supreme Court including those rendered in ***Union of India and others vs. P.O. Abraham and others,*** in C.A. No.8904/1994, decided on 13.8.1997, ***Virender Kumar, General Manager, Northern Railway, New Delhi vs. Avinash Chander Chadha,*** (1990) 2 SCR 769, ***State of A.P. vs. K.V.L. Narasimha and others,*** (1999) 4 SCC 181, ***State of Haryana & Others vs.***

O.P.Gupta & Others, (1996) 7 SCC 533 and a few others. Learned counsel for the Respondent has also drawn our attention to the recent decision of the Supreme Court in ***Union of India and Anrvs. Tarsem Lal and others,*** (2006) 9 SCALE 485 SC. In this case, the Supreme Court was concerned squarely with para 228 of the IREM and by relying on ***Virender Singh (Supra) and P.O., Abraham (Supra),*** the Hon'ble Supreme Court has held that on notional promotion, arrears of pay should not be given. Apart from the aforesaid, in the facts of the case we find that the Petitioner slept over his rights for a long time. He claimed that he was discriminated and his juniors were promoted in the year 1990. However he approached the Tribunal for the first time only in the year 2002 i.e. after about 12 years.

3. In view of the aforesaid legal position and in the facts of this case, we find no merit in this petition and accordingly dismiss the same.

VIPIN SANGHI
JUDGE

A.K. SIKRI
JUDGE

October 22, 2007

P.K. BABBAR